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Director's Office
Office of Patent Publication

In re Application of :
Alf Andersson :
Application No. 09/868,729 : **DECISION ON PETITION**
Filed: June 21, 2001 :
Attorney's Docket No. ANDERSSON=13 :

This is a decision on the Petition To Vacate Holding Of Abandonment Under 1.181(a)(1), received in the United States Patent and Trademark Office (USPTO) via facsimile transmission on February 17, 2005. Petitioner has submitted a copy of the return postcard, which acknowledges of the same petition on July 24, 2003, as evidenced by the Office Date stamp receipt thereon.

The petition is **DISMISSED**.

The application was abandoned for the applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. The issue fee was received on June 4, 2003. The due date was May 27, 2003.

Petitioner acknowledges receipt of the Notice of Allowance and Issue Fee(s) Due, mailed February 2, 2003, on March 3, 2003. However, Petitioner notes that the attached Notice of Allowability and Interview Summary Record was for an entirely different and unrelated application (09/777,140). Petitioner states that their Docketing Manager contacted the group to report the error and was informed that an entirely new Notice of Allowance and Issue Fee Due Form with correct attachments would be mailed and the deadline for response re-set.

Petitioner acknowledges receipt of the new Notice of Allowance (Notice), but noted that the Notice contained errors in that the deadline for payment of the issue fee was incorrect. Petitioner further notes that the mailing date of the Notice was March 4, 2003, meaning that the due date was June 4, 2003. Petitioner argues that the Issue Fee and formal drawings were timely filed on June 4, 2003 based on the second Notice of Allowance giving three months to pay the issue fee.

Investigation of the application file reveals that on March 3, 2003 the Office mailed the new Notice of Allowance and Fee(s) Due and the Notice of Allowability. However, it appears that since no errors existed in the first Notice of Allowance, the due date to pay the issue fee was not re-started. Therefore, the due date of May 27, 2003, indicated on the new Notice was correct.

Petitioner appears to be unaware of Office practice with respect to providing a new issue fee due date. However, petitioner is expected to be aware of, and to properly apply, the statutes, rules, practices, and procedures before the Office. As noted in 1056 O.G. 35 (June 12 1995) reproduced below:

ERRORS IN THE NOTICE OF ALLOWANCE

The purpose of the notice is to clarify existing Office practice with respect to providing a new issue fee due date. Sometimes errors appear in the Notice of Allowance, such as an incorrect number of claims, the misspelling of an inventor's name, an incorrect inventorship or an incorrect title. A duplicate Notice Of Allowance correcting the errors may be requested from the Group that mailed the Notice. However, a new issue fee due date will not be provided if the information on the original Notice of Allowance is sufficient to allow a reasonable practitioner to timely file a proper issue fee in the correct application. Specifically, the mere filing of a request for corrected or duplicate Notice of Allowance will not act to stay the period for paying the issue fee.

Since the error was the mailing of the wrong Notice of Allowability and Interview Summary Record by the USPTO and no error existed on the new Notice of Allowance the holding of abandonment will not be withdrawn at this time.

The USPTO apologizes if they were improperly informed that the due date for payment of the issue fee would be re-set.

Petitioner may seek relief by filing a Petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). Forms are available at USPTO website <http://www.uspto.gov>

■ Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable:
and
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

or

■ Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 Office of Petitions
 P. O. Box 1450
 Alexandria, VA 22313-1450

Telephone inquiries relating to this decision may be directed to the undersigned in the Office of Patent Publications at 703-305-9250 ext. 137.



Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publication